

Before the
Federal Communications Commission
 Washington, DC 20554

FILED/ACCEPTED

APR 11 2007

Federal Communications Commission
Office of the Secretary

In the Matter of:

Christ Temple Church

Video Programming Accessibility

Petition for Exemption of Closed
Captioning RequirementsCG Docket No. 06-181
CGB-CC-0025

To: Office of the Secretary

MOTION TO STRIKE AND
PRECAUTIONARY REPLY

Christ Temple Church ("Christ Temple"), by counsel, herby files this Motion to Strike and Precautionary Reply. On November 23, 2005, Christ Temple filed a petition with the FCC requesting that pursuant to Section 79.1 of the Rules it be exempt from the requirement of the FCC's closed captioning rules. On December 18, 2006, it supplemented its showing with a declaration from its Vice President of Operations. On September 11, 2006, Chief, Disability Rights Office, Consumer and Government Affairs Bureau found that closed captioning Christ Temple's programs would cause it an undue burden. Accordingly, the Chief, Disability Rights Office granted Christ Temple's petition.

On November 7, 2006, the FCC placed 494 petitions for exemption, including Christ Temple's Petition, on public notice. Oppositions to the Petition were due by November 27, 2006. A coalition of hearing advocacy groups requested a 120-day extension of time in which to file oppositions against the parties seeking exemption from

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the FCC's closed captioning rules. By Public Notice, DA 06-2329, released November 21, 2006, the FCC granted the Motion for Extension of Time.

On March 2, 2007, Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI"), National Association for the Deaf ("NAD"), Deaf and Hard of Hearing Consumer Advocacy Network ("DHHCAN"), Hearing Loss Association of America ("HLAA"), Association of Late-Deafened Adults, Inc. ("ALDA"), American Association of People with Disabilities ("AAPD"), and California Coalition of Agencies Serving the Deaf and Hard of Hearing ("CCASDHH") (collectively the "Advocacy Groups") filed an Opposition to Christ Temple's Petition for Exemption.

**The Advocacy Groups are Not Interested Persons
Within the Meaning of the FCC's Rules.**

Section 79.1 (f) (6) of the FCC's rules provides that "any interested person may file comments or oppositions to the petition" for exemption.¹ The Advocacy Groups are not interested persons within the meaning to the FCC rules and the Administrative Procedure Act.² The Advocacy Groups do not allege that the FCC's grant of the above captioned Petition in any way would injure them or any of their members. Nor do they claim that any member regularly watches Christ Temple's programs. The Advocacy Groups have not shown how the FCC's grant of the Petition for Exemption would cause them or their members harm. Without a showing of an injury-in-fact, the Advocacy Groups are not "interested persons." Therefore, they do not have standing to participate in this proceeding.

The Administrative Procedure Act provides that an "interested person" may appear before an agency for the presentation, adjustment, or determination of an issue. 5

¹ 47 C.F.R. § 79.1 (f)(6)

² 5 U.S.C.A. § 555(b).

U.S.C.A. § 555(b). The Court of Appeals has held that the injury-in-fact rule ~~for~~ standing of *Sierra Club v. Morton*, 405 U.S. 727, 733, 31 L. Ed. 2d 636, 92 S. Ct. 1361 (1972) covers the "interested person" language of the Administrative Procedure Act. *Trustees for Alaska v. EPA*, 749 F.2d 549,554 (9th Cir. 1984) (adopting the analysis in *Montgomery Environmental Coalition v. Costle*, 207 App. D.C. 233, 646 F.2d 568, 578 (D.C. Cir. 1980)). *Compare, In the Matter of Cox Communications, Inc.*, 14 FCC Rcd 11716 (1999) (Petitioners are not "interested persons" outside of the area where they are cable subscribers.)

The "irreducible constitutional minimum" for standing is that the appellant was injured in fact, that its injury was caused by the challenged conduct, and that the injury would likely be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 119 L. Ed. 2d 351, 112 S. Ct. 2130 (1992); *Microwave Acquisition Corp. v. FCC*, 330 U.S. App. D.C. 340, 145 F.3d 1410, 1412 (D.C. Cir. 1998).

Associations, such as the Advocacy Groups, have standing to sue on behalf of their members only if (1) at least one of the members would have standing to sue in his own right, (2) the interest the association seeks to protect is germane to its purpose, and (3) neither the claim asserted nor the relief requested requires that an individual member participate in the lawsuit. *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977).

Generally, the Commission accords party in interest standing to a petitioner that demonstrates either residence in the station's service area, or that the petitioner listens to or views the station regularly.³ *Chet-5 Broadcasting, L.P.* 14 FCC Rcd 13041 (1999). In this case, Advocacy Groups should have demonstrated that at least one **of** their members

³ 47 U.S.C. § 309 (d)(1) ("Any party in interest may file with the Commission a petition to deny. . .")

resides in the service area of a station that broadcasts Christ Temple's programming, and that the member regularly views the programming. The Advocacy *Groups* have not provided the statement of a single member who claims to be aggrieved or adversely affected by the grant of Christ Temple's Petition for Exemption of the Closed Captioning rules. The Advocacy Groups lack standing to oppose Christ Temple's Petition for Exemption of the Closed Captioning rules. Accordingly, the Commission should strike the Advocacy Groups' Opposition without consideration.

Procedural Defects

The Advocacy Groups' Opposition has numerous procedural defects. Chief among these is that the Advocacy Groups' "Application for Review of Bureau Order," was never properly filed or timely served on Christ Temple. On October 12, 2006, the Advocacy Groups filed an "Application for Review of Bureau Order" ("Application for Review"). The Application for Review is styled as a application of the Commission's decision, *In the Matter of Anglersfor Christ Ministries, Inc.; New Beginning Ministries*, DA 06-1802 (2006) ("*Anglersfor Christ*"). The FCC did not grant Christ Temple's petition in the *Anglersfor Christ* decision. Rather, the Bureau granted Christ Temple's petition in a separate order. The Application for Review does claim that it is seeking review of the "grant of 297 exemption petitions," but it is unclear to which petitions it is referring. Certainly, Christ Temple's name does not appear anywhere on the caption. The document only references applications CGB-CC-0005 and CGB-CC-0007. Christ Temple had no notice that the Advocacy Groups were seeking review of the grant of its petition. Section 1.115(f) of the Commission's rules states that an "application for review shall be served upon the parties to the proceeding." The Advocacy Groups did

not serve Christ Temple. Further, the lack of a service list suggests that the Advocacy Groups did not serve the other 297 parties to whom the Commission granted exemptions. Nor was the petition served on the Secretary of the Federal Communications Commission as required by Section 1.115(f) of the rules.⁴ Legally the Advocacy Groups Application for Review is a nullity. The Advocacy Groups have failed to timely file a legally valid Application for Review. As such, the grant of Christ Temple's petition became final and unappealable. The Commission, therefore, need not consider any portion of the Advocacy Groups defective petition.

The Advocacy Groups styled Opposition to Exemption is likewise rife with procedural errors. Section 1.49(a) of the Commission's Rules provides that all pleadings must be double-spaced. The Advocacy Groups' Opposition is single-spaced. Further, had the Advocacy Groups properly spaced the Opposition it would have exceeded ten double spaced pages. Section 1.49(b) and (c) provide that all pleadings exceeding ten pages shall contain a table of contents and a *summary*. The Advocacy Groups' Opposition contains neither a table of contents nor a *summary*. These procedural defects provide a separate and independent reason for striking the Advocacy Groups' defective Opposition.

Precautionary Reply

A review of the filings made by the Advocacy Groups in CG Docket No. 06-181 shows that the Advocacy Groups filed numerous cookie-cutter, one-size-fits-all pleadings. In the case of Christ Temple, the text of the Advocacy Groups' Opposition does not match the facts as presented in Christ Temple's Petition. For example, on page

⁴ See e.g. *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Caliente and Moapa, Nevada)*, 21 FCC Rcd 11481 (MMB 2006)

5 of the Opposition the Advocacy Groups, without any explanation or correlation to the facts claim that Christ Temple “has not provided sufficient financial information to determine whether an undue burden would result.” Nothing could be further from the truth. As Christ Temple stated in its supplemental Declaration,

The amount paid UPN Network for the 2-day a week airing of our television show is \$28,600.00 per year. All other costs involved in the production and distribution of the television show are performed by two staff members and volunteer staff of students 4th – 12th grade. Captioning costs would average \$300 per show - \$31,200 per year. This cost far exceeds any of our in-house production costs, equipment and supplies. This is a deterrent in our ability to deliver a quality product to the Kansas City Metropolitan area.

The Advocacy Groups fail to address Christ Temple’s statement that providing closed captioning will deter its ability to deliver programming to its community.

It would be futile to address the Advocacy Groups’ Opposition point by point, since the Advocacy Groups have made no effort to connect the uncontested facts set forth in Christ Temple’s Petition and supplement with the relevant FCC rules and regulations. By way of further example, the Advocacy Groups claim that Christ Temple failed to provide sufficient information that it could not receive closed captioning assistance from the distributors of its programming. Christ Temple is a producer of a 30-minute program to evangelize biblical teachings. The program is a low budget operation, produced largely by schoolchildren. The point of the show, in large part, is to train children as camera operators and in the area of video production. Christ Temple purchases broadcast time from local television and cable stations. There is no reasonable expectation that the television station it purchases time from would pay the fees for closed captioning, since this would consume more money than it can get for the airtime.

Christ Temple's showing that it will suffer an undue burden is conclusive and unchallenged. Accordingly, the FCC should grant its Petition for exemption of Section 79.1 of the FCC's rules.

Conclusion

The Advocacy Groups lack standing to file an Opposition to Christ Temple's Petition for Exemption. Additionally, their pleading contains numerous procedural errors. Accordingly, FCC should dismiss the Advocacy Groups' Opposition without consideration.

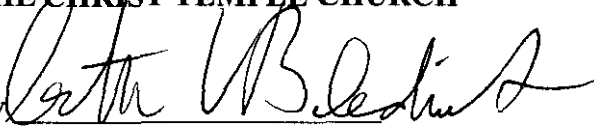
Even if the Commission should consider its one-size-fits-all pleading, what could it make of such a disjointed document? The Advocacy Groups accept all of Christ Temple's factual showings. The Advocacy Groups merely provide a legal memo which fails to connect the FCC rules with the facts of this case (or apparently any other case). What is the point of such a pleading? Apparently the Advocacy Groups have determined that no programmer, regardless how small or how deserving, should ever be granted an exemption. In the instant case, the Advocacy Groups would take away a program produced by children; deprive children of an opportunity to learn, just to make their rather dubious point about closed captioning.

Without examining or challenging the facts, the Advocacy Groups have concluded that none of the 494 petitions for exemption listed in the FCC's November 7, 2006 Public Notice should be granted an exemption. Thus, the Advocacy Groups would put hundreds of small program producers out of business, rather than concede that occasionally there is a need for an exemption of the Commission's rules. The FCC

should not countenance such shameful and selfish conduct. The Advocacy Groups' opposition, to the extent the FCC considers it at all, should be summarily denied.

Respectfully submitted,

THE CHRIST TEMPLE CHURCH

By 

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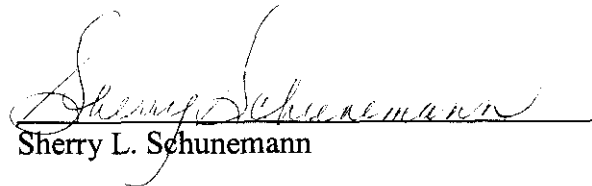
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April 11, 2007

CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, a secretary in the law office of Smithwick & Belendiuk, P.C., do hereby certify that a copy of the foregoing "Motion to Stroke and Precautionary Reply" was mailed by First Class **U.S.** Mail, postage prepaid, this 11th day of April, **2007** to the following:

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